

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 521 State Preemption of the Regulation of Hoisting Equipment

SPONSOR(S): Business & Consumer Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee		Collins	Creamer

SUMMARY ANALYSIS

The bill amends s. 489.113, F.S., to preempt all local regulation of hoisting equipment to the state, unless the regulation is otherwise federally preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926. Regulation that is preempted to the state includes, but is not limited to, regulation regarding hurricane preparedness or public safety.

The bill has no fiscal impact on state funds.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

The Occupational Safety and Health Act of 1970 (hereinafter the OSH Act) created the Occupational Safety and Health Administration (hereinafter OSHA), a federal agency that promulgates standards related to workplace health and safety.¹ The Supreme Court has held that unless otherwise approved by OSHA, any state regulation of occupational safety and health issues for which a federal OSHA standard is in effect is federally preempted by the OSH Act.² Thus, the OSH Act prohibits state and local governments from promulgating regulation related to workplace health or safety if an applicable OSHA standard is already in place.

Conversely, the OSH Act does not federally preempt regulation regarding workplace health or safety if there is not a relevant OSHA standard.³ As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards may be promulgated by state and local governments.

OSHA's occupational health and safety standards apply to both construction worksites and employees engaged in construction work.⁴ These standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.⁵ However, the 11th Circuit Court of Appeals recently affirmed a United States District Court decision, holding that the scope of OSHA's standards as they relate to these cranes and hoists does not include regulation regarding hurricane preparedness or public safety.⁶ Thus, regulation regarding hurricane preparedness or public safety is not preempted by the OSH Act, and can be promulgated by state and local governments.

Effect of Proposed Changes:

The bill amends s. 489.113(11), F.S., to preempt all local regulation of hoisting equipment to the state, so long as the regulation is not already federally preempted by the OSH Act. For example, any local regulation regarding hurricane preparedness or public safety is preempted to the state. However, this state preemption does not apply to the regulation of elevators under Ch. 399, F.S.

B. SECTION DIRECTORY:

Section 1: The bill creates subsection (11) of s. 489.113, F.S., to preempt all local regulation of hoisting equipment to the state, unless otherwise federally preempted by the OSH Act.

Section 2: provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ 29 U.S.C. § 651.

² Gade v. National Solid Waste Management Association, 505 U.S. 88, 98-99 (1992).

³ 29 U.S.C. § 667(a).

⁴ 29 C.F.R. § 1910.12(a).

⁵ 29 C.F.R. § 1926.500 & 1926.552.

⁶ Associated Builders v. Miami-Dade Co., No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), aff'd, 954 F. 3d 1321, 1325 (11th Cir. 2010).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.